

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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USDC Docket Number : 05-cv-10908

Kenneth M. Kansky

v.

Coca-Cola Bottling Company

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**CLERK'S CERTIFICATE**

I, Sarah A. Thornton, Clerk of the United States District Court for the District of Massachusetts, do hereby certify that the annexed documents numbered:

1-19, 23-41

and contained in Volume(s) I are the original or electronically filed pleadings and constitute the record on appeal in the above entitled case for the Notice of Appeal filed on 6/1/2006.

In testimony whereof, I hereunto set my hand and affix the seal of this Court on July 6, 2006.

Sarah A. Thornton, Clerk of Court

By: 

Deputy Clerk

Receipt of the documents in the above entitled case is hereby acknowledged this date: 7-7-06.

  
Deputy Clerk, US Court of Appeals

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Please complete the following information:

COURT OF APPEALS DOCKET NUMBER ASSIGNED: \_\_\_\_\_

APPEAL

**United States District Court  
District of Massachusetts (Boston)  
CIVIL DOCKET FOR CASE #: 1:05-cv-10908-DPW**

Kansky v. Coca Cola Bottling of Northern New  
England . et al  
Assigned to: Judge Douglas P. Woodlock  
Cause: 29:1001 E.R.I.S.A.: Employee Retirement

Date Filed: 05/03/2005  
Jury Demand: Plaintiff  
Nature of Suit: 791 Labor:  
E.R.I.S.A.  
Jurisdiction: Federal Question

**Plaintiff**

**Kenneth M. Kansky**

represented by **Bernard A. Kansky**  
Law Office of Bernard A. Kansky  
and Associates  
468 Commercial Street  
Boston, MA 02109-1020  
617-227-2020  
Fax: 617-227-5717  
Email: berakan@aol.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**Coca Cola Bottling of Northern  
New England .**

represented by **Stephen D. Rosenberg**  
The McCormack Firm, LLC  
One International Place  
7th Floor  
Boston, MA 02110-0140  
617-951-2929  
Fax: 617-951-2672  
Email:  
srosenberg@mccormackfirm.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Coca Cola Enterprises, Inc.**

represented by **Stephen D. Rosenberg**

(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Coca Cola Enterprises Long-Term Disability Plan**  
*a/k/a Core LTD Benefits*









represented by **Stephen D. Rosenberg**  
 (See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Aetna Life Insurance Company**

represented by **Stephen D. Rosenberg**  
 (See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
05/03/2005	<u>1</u>	COMPLAINT against Coca Cola Bottling of Northern New England., Coca Cola Enterprises, Inc., Coca Cola Enterprises Long-Term Disability Plan, Aetna Life Insurance Company Filing fee: \$ 250, receipt number 63931, filed by Kenneth M. Kansky. (Attachments: # <u>1</u> Cover Sheet)(Nici, Richard) (Entered: 05/04/2005)
05/03/2005		If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Collings. (Nici, Richard) (Entered: 05/04/2005)
05/03/2005		Summons Issued as to Coca Cola Bottling of Northern New England., Coca Cola Enterprises, Inc., Coca Cola Enterprises Long-Term Disability Plan, Aetna Life Insurance Company. (Nici, Richard) (Entered: 05/04/2005)
05/20/2005	<u>2</u>	Letter/request for additional summonses(non-motion) from Kansky. (Nici, Richard) (Entered: 05/23/2005)
06/06/2005	<u>3</u>	STIPULATION regarding additional time for defendants to answer or otherwise plead by Kenneth M. Kansky, Coca Cola Bottling of Northern New England., Coca Cola Enterprises, Inc., Coca Cola Enterprises Long-Term Disability Plan, Aetna Life Insurance Company. (Nici, Richard) (Entered: 06/07/2005)

06/06/2005	 4	NOTICE of Appearance by Stephen D. Rosenberg on behalf of Coca Cola Bottling of Northern New England., Coca Cola Enterprises, Inc., Coca Cola Enterprises Long-Term Disability Plan, Aetna Life Insurance Company (Nici, Richard) (Entered: 06/07/2005)
06/17/2005	 5	CERTIFICATE OF CONSULTATION by Stephen D. Rosenberg on behalf of Coca Cola Bottling of Northern New England., Coca Cola Enterprises, Inc., Coca Cola Enterprises Long-Term Disability Plan, Aetna Life Insurance Company. (Nici, Richard) (Entered: 06/22/2005)
06/17/2005	 6	MOTION to Strike Jury Demand by Coca Cola Bottling of Northern New England., Coca Cola Enterprises, Inc., Coca Cola Enterprises Long-Term Disability Plan, Aetna Life Insurance Company.(Nici, Richard) (Entered: 06/22/2005)
06/17/2005	 7	MEMORANDUM in Support re <u>6</u> MOTION to Strike filed by Coca Cola Bottling of Northern New England., Coca Cola Enterprises, Inc., Coca Cola Enterprises Long-Term Disability Plan, Aetna Life Insurance Company. (Nici, Richard) (Entered: 06/22/2005)
06/17/2005	 8	MOTION to Dismiss Count IV by Coca Cola Bottling of Northern New England., Coca Cola Enterprises, Inc., Coca Cola Enterprises Long-Term Disability Plan, Aetna Life Insurance Company.(Nici, Richard) (Entered: 06/22/2005)
06/17/2005	 9	MEMORANDUM in Support re <u>8</u> MOTION to Dismiss filed by Coca Cola Bottling of Northern New England., Coca Cola Enterprises, Inc., Coca Cola Enterprises Long-Term Disability Plan, Aetna Life Insurance Company. (Nici, Richard) (Entered: 06/22/2005)
06/17/2005	 10	ANSWER to Complaint by Coca Cola Bottling of Northern New England., Coca Cola Enterprises, Inc., Coca Cola Enterprises Long-Term Disability Plan, Aetna Life Insurance Company.(Nici, Richard) (Entered: 06/22/2005)
06/20/2005		Judge Douglas P. Woodlock : Electronic ORDER entered.ORDER REQUIRING ELECTRONIC FILING. It is hereby ORDERED that, unless leave is granted, upon good cause shown, to file paper documents in lieu of electronic filing via this Court's CM/ECF system, ALL future submissions in this case must be electronically filed. Such filings shall be made in accordance with, and subject to, the



		terms and conditions of electronic filing as set forth by this Court. All parties and counsel who choose to appear in this action must make arrangements to register for participation in electronic case filing, if they have not already done so. It is FURTHER ORDERED that Notices, Orders and Memoranda of the Court will only be filed and served electronically. Once a party or counsel has registered for electronic filing, it is his/her responsibility to monitor his/her e-mail to ensure receipt of electronic notices. Any changes in e-mail addresses must be reported to the Court immediately (Nici, Richard) (Entered: 06/20/2005)
07/06/2005	<u>11</u>	MEMORANDUM in Opposition re <u>6</u> MOTION to Strike, <u>8</u> MOTION to Dismiss filed by Kenneth M. Kansky. (Nici, Richard) (Entered: 07/07/2005)
07/07/2005	<u>12</u>	NOTICE of Scheduling Conference: Scheduling Conference set for 8/23/2005 03:00 PM in Courtroom 1 before Judge Douglas P. Woodlock. (Rynne, Michelle) (Entered: 07/07/2005)
08/22/2005	<u>13</u>	CERTIFICATE OF CONSULTATION by Stephen D. Rosenberg on behalf of Coca Cola Bottling of Northern New England., Coca Cola Enterprises, Inc., Coca Cola Enterprises Long-Term Disability Plan, Aetna Life Insurance Company. (Nici, Richard) (Entered: 08/26/2005)
08/23/2005		Judge Douglas P. Woodlock : Electronic ORDER entered granting <u>6</u> Motion to Strike, granting <u>8</u> Motion to Dismiss. Allowed at hearing this date. (Rynne, Michelle) (Entered: 08/23/2005)
08/23/2005		Electronic Clerk's Notes for proceedings held before Judge Douglas P. Woodlock : Scheduling Conference held on 8/23/2005. Motion to dismiss- ALLOWED; Motion to strike - ALLOWED; Administrative record shall be provided to the plaintiff no later than 9/30/05; motion/cross-motion for summary judgment by 10/30/05. (Court Reporter Pam Owens.) (Rynne, Michelle) (Entered: 08/23/2005)
09/27/2005	<u>14</u>	NOTICE of Change of Address by Stephen D. Rosenberg (Nici, Richard) (Entered: 09/28/2005)
10/05/2005	<u>15</u>	CERTIFICATE OF CONSULTATION by Stephen D. Rosenberg on behalf of Coca Cola Bottling of Northern New England., Coca Cola Enterprises, Inc., Coca Cola Enterprises

		Long-Term Disability Plan, Aetna Life Insurance Company. (Nici, Richard) (Entered: 10/06/2005)
10/10/2005	16	Judge Douglas P. Woodlock : ORDER entered. SCHEDULING ORDER: Motions due by 10/30/2005.(Rynne, Michelle) (Entered: 10/10/2005)
10/20/2005	17	Joint MOTION for Extension of Time to November 30, 2005 to file summary judgment motions by Coca Cola Bottling of Northern New England., Coca Cola Enterprises, Inc., Coca Cola Enterprises Long-Term Disability Plan, Aetna Life Insurance Company.(Rosenberg, Stephen) (Entered: 10/20/2005)
10/24/2005		Judge Douglas P. Woodlock : ElectronicORDER entered granting 17 Motion for Extension of Time summary judgment motions. Motions due 11/30/05. (Rynne, Michelle) (Entered: 10/24/2005)
10/24/2005		Set/Reset Scheduling Order Deadlines: Motions due by 11/30/2005. (Rynne, Michelle) (Entered: 10/24/2005)
11/30/2005	18	MOTION for Summary Judgment by Coca Cola Bottling of Northern New England., Coca Cola Enterprises, Inc., Coca Cola Enterprises Long-Term Disability Plan, Aetna Life Insurance Company. (Attachments: # 1)(Rosenberg, Stephen) (Entered: 11/30/2005)
11/30/2005	20	MOTION for Summary Judgment by Kenneth M. Kansky. FILED UNDER SEAL(Nici, Richard) (Entered: 12/02/2005)
11/30/2005	21	MEMORANDUM in Support re [20] MOTION for Summary Judgment filed by Kenneth M. Kansky. FILED UNDER SEAL (Nici, Richard) (Entered: 12/02/2005)
12/01/2005	19	Joint MOTION to Seal Document <i>and impound summary judgment filings</i> by Coca Cola Bottling of Northern New England., Coca Cola Enterprises, Inc., Coca Cola Enterprises Long-Term Disability Plan, Aetna Life Insurance Company. (Rosenberg, Stephen) (Entered: 12/01/2005)
12/01/2005	22	MEMORANDUM in Support re 18 MOTION for Summary Judgment filed by Coca Cola Bottling of Northern New England., Coca Cola Enterprises, Inc., Coca Cola Enterprises Long-Term Disability Plan, Aetna Life Insurance Company. FILED UNDER SEAL (Nici, Richard) (Entered: 12/02/2005)



12/01/2005	23	STATEMENT of facts re <u>18</u> MOTION for Summary Judgment includes appendix. FILED UNDER SEAL (Nici, Richard) (Entered: 12/02/2005)
12/01/2005	24	TRANSCRIPT (Administrative Record). (Nici, Richard) (Entered: 12/02/2005)
12/02/2005		Judge Douglas P. Woodlock : Electronic ORDER entered granting <u>19</u> Motion to Seal Document (Rynne, Michelle) (Entered: 12/02/2005)
12/12/2005	25	MEMORANDUM in Opposition re [20] MOTION for Summary Judgment filed by Kenneth M. Kansky. FILED UNDER SEAL (Nici, Richard) (Entered: 12/14/2005)
12/15/2005	26	MEMORANDUM in Opposition re [20] MOTION for Summary Judgment filed by Coca Cola Bottling of Northern New England., Coca Cola Enterprises, Inc., Coca Cola Enterprises Long-Term Disability Plan, Aetna Life Insurance Company. (Nici, Richard) (Entered: 12/15/2005)
01/12/2006	27	MOTION for Leave to File Reply Memorandum by Coca Cola Bottling of Northern New England., Coca Cola Enterprises, Inc., Coca Cola Enterprises Long-Term Disability Plan, Aetna Life Insurance Company.(Nici, Richard) FILED UNDER SEAL (Entered: 01/13/2006)
01/12/2006	28	REPLY to Response to Motion re <u>18</u> MOTION for Summary Judgment filed by Coca Cola Bottling of Northern New England., Coca Cola Enterprises, Inc., Coca Cola Enterprises Long-Term Disability Plan, Aetna Life Insurance Company. (Nici, Richard)FILED UNDER SEAL (Entered: 01/13/2006)
01/12/2006	29	MOTION to Strike [25] Memorandum in Opposition to Motion by Coca Cola Bottling of Northern New England., Coca Cola Enterprises, Inc., Coca Cola Enterprises Long-Term Disability Plan, Aetna Life Insurance Company.(Nici, Richard) FILED UNDER SEAL (Entered: 01/13/2006)
01/12/2006	30	MEMORANDUM in Support re [29] MOTION to Strike [25] Memorandum in Opposition to Motion filed by Coca Cola Bottling of Northern New England., Coca Cola Enterprises, Inc., Coca Cola Enterprises Long-Term Disability Plan, Aetna Life Insurance Company. FILED UNDER SEAL (Nici, Richard) including certificate of service. (Entered: 01/13/2006)
01/17/2006		Judge Douglas P. Woodlock : Electronic ORDER entered

		granting [27] Motion for Leave to File reply, granting [27] Sealed Motion. (Rynne, Michelle) (Entered: 01/17/2006)
01/19/2006	●31	Plaintiff's supplementation of his motion for Summary Judgment and MEMORANDUM in Opposition re <u>18</u> MOTION for Summary Judgment filed by Kenneth M. Kansky. (Nici, Richard)FILED UNDER SEAL (Entered: 01/19/2006)
01/27/2006	●32	MEMORANDUM in Opposition re [27] MOTION for Leave to File SEALED MOTION filed by Kenneth M. Kansky. (Nici, Richard)FILED UNDER SEAL AND NOT SCANNED (Entered: 01/30/2006)
01/30/2006	●	NOTICE of Hearing on Motion [20] MOTION for Summary Judgment, [29] MOTION to Strike [25] Memorandum in Opposition to Motion, <u>18</u> MOTION for Summary Judgment: Motion Hearing set for 4/12/2006 02:30 PM in Courtroom 1 before Judge Douglas P. Woodlock. (Rynne, Michelle) (Entered: 01/30/2006)
03/08/2006	●	NOTICE of Rescheduling Hearing on Motion [20] MOTION for Summary Judgment, [29] MOTION to Strike [25] Memorandum in Opposition to Motion, <u>18</u> MOTION for Summary Judgment: Motion Hearing reset for 4/26/2006 02:30 PM in Courtroom 1 before Judge Douglas P. Woodlock. (Rynne, Michelle) (Entered: 03/08/2006)
04/26/2006	●	ElectronicClerk's Notes for proceedings held before Judge Douglas P. Woodlock : Motion Hearing held on 4/26/2006 re [20] MOTION for Summary Judgment, [29] MOTION to Strike [25] Memorandum in Opposition to Motion, <u>18</u> MOTION for Summary Judgment. Motions taken under advisement. (Court Reporter Pam Owens.) (Rynne, Michelle) (Entered: 04/27/2006)
05/01/2006	●33	Judge Douglas P. Woodlock : MEMORANDUM AND ORDER entered granting <u>18</u> Motion for Summary Judgment, denying [20] Motion for Summary Judgment, granting in part and denying in part [29] Motion to Strike (Woodlock, Douglas) (Entered: 05/02/2006)
05/02/2006	●34	Judge Douglas P. Woodlock : ORDER entered. JUDGMENT in favor of defendants against plaintiff.(Rynne, Michelle) (Entered: 05/02/2006)



05/10/2006	<u>35</u>	First MOTION to Alter Judgment <i>Or Amend Judgment Pursuant to Rule 59(e) By The Plaintiff</i> by Kenneth M. Kansky.(Kansky, Bernard) (Entered: 05/10/2006)
05/19/2006	<u>36</u>	Supplemental MOTION <i>for Rule 59(e) Relief and to Vacate Memorandum, Judgment and Orders and the Orders Realtd to the Parties' Motions For Summary Judgment Dated May 1, 2006 and Docketed May 2, 2006 And For Remand to United States Magistrate or to the Court's Alternative Dispute Resolution Program</i> by Kenneth M. Kansky.(Kansky, Bernard) (Entered: 05/19/2006)
05/24/2006	<u>37</u>	Opposition re <u>35</u> First MOTION to Alter Judgment <i>Or Amend Judgment Pursuant to Rule 59(e) By The Plaintiff</i> filed by Coca Cola Bottling of Northern New England., Coca Cola Enterprises, Inc., Coca Cola Enterprises Long-Term Disability Plan, Aetna Life Insurance Company. (Brodie, Eric) (Entered: 05/24/2006)
06/01/2006	<u>38</u>	REPLY to Response to Motion re <u>35</u> First MOTION to Alter Judgment <i>Or Amend Judgment Pursuant to Rule 59(e) By The Plaintiff</i> filed by Kenneth M. Kansky. (Kansky, Bernard) (Entered: 06/01/2006)
06/01/2006	<u>39</u>	NOTICE OF APPEAL as to <u>34</u> Judgment by Kenneth M. Kansky. \$ 455 NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at <a href="http://www.ca1.uscourts.gov/clerks/transcript.htm">http://www.ca1.uscourts.gov/clerks/transcript.htm</a> MUST be completed and submitted to the Court of Appeals. Appeal Record due by 6/21/2006. (Kansky, Bernard) (Entered: 06/01/2006)
06/05/2006		Judge Douglas P. Woodlock : Electronic MEMORANDUM AND ORDER entered denying <u>35</u> Motion to Alter Judgment, denying <u>36</u> Motion to vacate and remand. Through these motions the plaintiff seeks to reargue the motion for summary judgment decided adversely to him. The arguments presented were all considered in substance before final judgment was entered and do not require any further discussion, save one: plaintiff's complaint about reference in my opinion, 5/1/06 Memorandum and Order at 31-33, to an Annals of Medicine article that was not itself expressly made part of the administrative record. There is considerable irony in plaintiff's current complaint about the reference since it was he who

		invited it by urging that I engage in careful consideration of the resolution of Houle v. Raytheon Co., Civ. No. 00-12071-NG. Understanding of Magistrate Judge Dein's Report and Recommendation in Houle necessitated review of the Annals article because it played a significant role in her Report and Recommendation, see slip op. at 20-21 n.10, 36-40 (D.Mass. April 28, 2003), which was adopted by Judge Gertner. As is apparent from my own reference to the article, I considered it to evaluate - as plaintiff requested - the reasonableness of Aetna's actions in this case against the arguments about assertedly similar cases, such as Houle, pressed as persuasive by the plaintiff at oral argument. Moreover, as I noted in my opinion, 5/1/06 Memo and Order at 21 and nn. 11 & 12, the article is apparently "the basis for the comments of Drs. Bell, Burton, and DeFoy [in this case] to the effect that Kansky cannot be diagnosed according to the current research criteria put out by the Centers for Disease Control." (Woodlock, Douglas) (Entered: 06/05/2006)
06/07/2006	40	MOTION for Reconsideration re 35 First MOTION to Alter Judgment <i>Or Amend Judgment Pursuant to Rule 59(e) By The Plaintiff</i> by Kenneth M. Kansky.(Kansky, Bernard) (Entered: 06/07/2006)
06/07/2006		Receipt #72942 \$455 for Notice of Appeal. (Nici, Richard) (Entered: 06/12/2006)
06/07/2006	41	Letter/request (non-motion) from Bernard Kansky. (Nici, Richard) (Entered: 06/13/2006)
06/08/2006		Judge Douglas P. Woodlock : Electronic ORDER entered denying 40 Motion for Reconsideration (Woodlock, Douglas) (Entered: 06/08/2006)
06/20/2006	42	<i>Amended</i> Subsequent NOTICE OF APPEAL by Kenneth M. Kansky <i>Plaintiff</i> . Filing fee \$ 455. Appeal Record due by 7/10/2006. (Kansky, Bernard) (Entered: 06/20/2006)